

**CIVIL SERVICE COMMISSION MINUTES  
OCTOBER 3, 2007**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

Francesca Krauel  
W. Dale Bailey  
Cheryl Fisher  
A.Y. Casillas  
Barry I. Newman

Absent was:

None

Comprising a quorum of the Commission

Support Staff Present:

Patt Zmary, Executive Officer  
William D. Smith, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

**Approved  
Civil Service Commission  
November 7, 2007**

<u>1:30 P.M.</u>	CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation
<u>2:30 p.m.</u>	OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California

COMMENTS: Motion by Newman to approve all items not held for discussion; seconded by Bailey. Carried.

B. Commissioner Bailey: CONSIDERATION OF PUBLIC  
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Michael  
Mercurio, on behalf of **2007-13**, appealing an Order from  
the Sheriff's Department.

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## **CONFIRMATION OF ASSIGNMENT**

2. Commissioner Krauel: Julie Buechler, Esq., on behalf of 2007-15, appealing an Order from the Sheriff's Department.

**Confirmed.**

## **DISCIPLINE**

### **Findings**

3. Commissioner Newman: Richard Pinckard, Esq., on behalf of 2007-10, appealing an Order from the Sheriff's Department.

### **FINDINGS AND RECOMMENDATIONS:**

Employee was a Deputy Sheriff-Detentions. Employee was terminated from a position for an incident in which Employee allegedly used unreasonable and unnecessary force on an inmate, failed to document the incident, and then was untruthful in the investigation of the incident. At the commencement of the hearing, the Department conceded that the degree of force allegedly used was insufficient to warrant termination, but that Employee's dishonesty during the investigation raised the discipline to the level of termination.

However, at the Commission hearing, the Department proved neither a use of force nor dishonesty regarding use of force. In the Department's investigation, the witnesses, all inmates except Employee, gave widely differing versions of the incident. At the Commission hearing, only one inmate other than the alleged victim testified, and that version was among the most aberrant. Even the alleged victim inmate gave substantially different accounts of the incident to the Internal Affairs Investigator and at the hearing. It was also evident at the hearing that the ability of the inmate witnesses to actually see what occurred was questionable, that they were biased and motivated to implicate Department employees, and that they had the opportunity to influence each other's testimony. Thus, while there were some elements of consistency in the inmates' testimony, generally their testimony differed in key areas undermining the credibility of the allegations. Accordingly, the Department failed to prove the charges in the Order. It is therefore recommended that the Order of Termination and Charges be reversed; that Employee be awarded back pay, benefits and interest from the date of the Order of Termination to the date of this decision, minus any wages Employee received from outside employment;

that the Commission approve and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Newman to approve Findings and Recommendations; seconded by Bailey. Carried.**

4. Commissioner Bailey: Michael Mercurio, on behalf of 2007-13, appealing an Order from the Sheriff's Department.

**FINDINGS AND RECOMMENDATIONS:**

Employee is a Deputy Sheriff-Detentions who received a five day pay step reduction. The central facts of the incident which form the basis of the discipline are largely undisputed.

Employee removed a printed email from a Watch Commander's desk without permission, then shared it with other deputies, and a Union representative. The email initiated an investigation of an incident in which the Employee was involved. The Employee had prior discipline for disseminating official Department information. Rather than removing the document from the Watch Commander's desk, Employee should have advised the Union representative of the concern, and raised the issue with the Department. Although there were facts which mitigated Employee's conduct, the five day pay step reduction is reasonable given Employee's prior discipline for a similar offense. It is therefore recommended that the Order of Pay Step Reduction be affirmed; the Commission approve and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Bailey to approve Findings and Recommendations; seconded by Newman.**

During discussion, Commissioner Krauel stated: "I would like to state that I am supporting the motion although my reasons are somewhat different. I believe this deputy removed a document without authority, copied it without authority, and based on those acts in light of prior discipline for similar conduct, is sufficient to uphold the discipline".

**Carried.**

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## DISCRIMINATION

### Complaints

5. **Carlos Carrera**, Public Defender Investigator II, alleging age, national origin, race and non-job-related factor (retaliation) by the Office of the Public Defender. (See Item No. 11 below.)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

**Staff recommendation approved. Commissioner Casillas assigned.**

6. **John Rench**, former Protective Services Worker, alleging disability and gender discrimination by the Health and Human Services Agency.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

**Staff recommendation approved. Commissioner Bailey assigned.**

### Findings

7. Commissioner Fisher: **Marin Garrison**, Equipment Operator, alleging retaliation discrimination by the Department of Public Works.

#### FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission (Commission) on July 18, 2007, the Commission appointed Cheryl Fisher to investigate the complaint submitted by Marin Garrison, which alleged retaliation discrimination by the Department of Public Works. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation on or about September 5, 2007, and has reported back to the Commission its findings.

This Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report and has concluded that the evidence does not support a finding of

probable cause that a violation of discrimination laws occurred. It is therefore recommended that Mr. Garrison's Rule VI discrimination complaint be denied; and that he Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Fisher to approve Findings and Recommendations; seconded by Casillas. Carried.**

8. Commissioner Fisher: **Fred Kuhlman**, Senior Equipment Operator, alleging retaliation and age discrimination by the Department of Public Works.

FINDINGS AND RECOMMENDATIONS:

Prior to the reading of the Findings and Recommendations in this matter, Frank Clowney, Esq. addressed the Commissioners on behalf of Mr. Kuhlman. He stated that there is a clear cut prima facie case that Mr. Kuhlman was discriminated against on the basis of age. Mr. Clowney gave a brief history of employee's work experience, emphasizing that Mr. Kuhlman was promoted, but within 3 months, was demoted back into his former position. Mr. Clowney believes that OIA's investigation was incomplete because Mr. Kuhlman's witnesses were not interviewed.

The Commission requested that OIA's Investigator come forward with regard to the report prepared. Being unavailable at the time of this meeting, the Commission opted to continue this matter until the next Commission meeting, November 7, 2007.

**Motion by Fisher to continue this matter; seconded by Newman. Carried.**

9. Commissioner Krauel: **Regina Micone**, Supervising Nurse, alleging age and race discrimination by the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission (Commission) on July 18, 2007, the Commission appointed Francesca Krauel to investigate the complaint submitted by Regina Micone, which alleged age and race discrimination by the Health and Human Services Agency. In accordance with the established rules and procedures of the Commission, the

matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation on or about September 10, 2007, and has reported back to the Commission its findings.

This Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that Ms. Micone's Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Krauel to approve findings and Recommendations; seconded by Casillas. Carried.**

10. Commissioner Newman: **Maria Sinsay**, former Human Services Specialist, alleging race discrimination by the Health and Human Services Agency.

#### FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission (Commission) on July 18, 2007, the Commission appointed Barry I. Newman to investigate the complaint submitted by Maria Sinsay, which alleged race discrimination by the Health and Human Services Agency. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation on or about September 11, 2007, and has reported back to the Commission its findings.

This Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that Ms. Sinsay's Rule VI discrimination complaint be denied; and The Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Newman to approve findings and  
Recommendations; seconded by Casillas. Carried.**

## **SELECTION PROCESS**

### **Appeals**

11. **Carlos Carrera**, Public Defender Investigator II, appealing his non-selection for the classification of Public Defender Investigator III by the Office of the Public Defender. (See Item No. 5 above.)

RECOMMENDATION: Hold request for Rule X hearing in abeyance pending resolution of discrimination matter.

**Staff recommendation approved.**

### **Findings**

12. **Cynthia Edwards**, appealing the Department of Human Resources' removal of her name from the employment list for Deputy Sheriff Cadet.

13. **Michael La Lanne**, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet-Detentions/Court Services.

14. **Nicole Dolson**, appealing the Department of Human Resources' removal of her name from the employment list for Deputy Probation Officer.

RECOMMENDATION: Ratify Item Nos. 12 - 14. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Item Nos. 12-14 ratified.**

## **OTHER MATTERS**

### **Extension of Temporary Appointments**

15. Health and Human Services Agency

2 Residential Care Workers Trainees On-Call (Lorena Anchondo, Ruben Gama)

1 Residential Care Worker II (Tiffany Amos)

RECOMMENDATION: Ratify.

**Item No. 15 ratified.**

**INFORMATION**

16. **Stacie Neldaughter**, former Deputy Public Administrator-Guardian, withdrawing her appeal of a Final Order of Termination and Charges from the Health and Human Services Agency.  
(Commissioner Bailey)

**Withdrawn.**

17. Public Input.

ADJOURNED: **3:08 p.m.**

**NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION:**

**NOVEMBER 7, 2007**